

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **ROBERT J.C. STEVENS, CA**, a member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

TO: Mr. Robert J.C. Stevens, CA
116 Augustine Drive
KINGSVILLE, ON N9Y 1C5

AND TO: The Professional Conduct Committee, ICAO

REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 2, 2004

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on September 2, 2004 to hear a charge brought by the professional conduct committee against Mr. Robert J.C. Stevens, a member of the Institute.
2. The professional conduct committee was represented by Ms. Barbara Glendinning. Mr. Stevens was present and represented himself.
3. The decision and the order of the discipline committee were made known at the hearing on September 2, 2004. The formal decision and order made on September 2, 2004 was signed by the secretary on September 14, 2004 and sent to the parties that day. These reasons, given pursuant to Bylaw 574, include the charge, the decision, the order and the reasons of this panel of the discipline committee for the decision and order.

THE CHARGE AND THE PLEA

4. The charge made by the professional conduct committee on April 7, 2004 reads as follows:
 1. THAT the said Robert James C. (Jim) Stevens, in or about the period September 2, 2003 to April 7, 2004, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.
5. Mr. Stevens entered a plea of not guilty to the charge.

THE PROCEEDINGS

6. Ms. Glendinning gave an overview of the case for the professional conduct committee and filed as an exhibit the affidavit of Mr. Grant Dickson, the director of practice inspection, sworn on August 23, 2004. Ms. Glendinning said that Mr. Stevens had been provided with a copy of the affidavit and did not object to it being entered as an exhibit as he did not wish to cross-examine Mr. Dickson.

7. Mr. Stevens gave evidence on his own behalf. In the course of giving his evidence, the panel decided that it would proceed *in camera* pursuant to Bylaw 554 so that intimate financial and personal matters would not be disclosed. Mr. Stevens was cross-examined by Ms. Glendinning. Both Ms. Glendinning and Mr. Stevens made submissions with respect to the issue of guilt or innocence.

THE FACTS

8. Mr. Stevens did not contradict or challenge the facts set out in Mr. Dickson's affidavit. The relevant facts, as we found them to be, are set out below in paragraphs 9 to 14.

9. Mr. Stevens was selected for a practice inspection in January, 2002. It was decided that it would be a desk inspection. He was asked to submit specified files to the Institute in November, 2002. Mr. Stevens asked for and was given a deferral for one year.

10. In September 2003, Mr. Stevens was sent a letter and asked to submit the previously selected files by October 7, 2003. When Mr. Stevens did not do so he was advised that if he did not respond by the end of business on November 21, 2003, the matter would be referred to the professional conduct committee. Mr. Stevens did reply on November 21, 2003 and asked for a few more days to deliver the files. He wrote on November 23, 2003 and indicated that the requested files would not be available for submission until December 8, 2003. But he did not send the files on or after December 8, 2003, and attempts to contact Mr. Stevens by phone on December 12, 2003 and January 5, 2004 were unsuccessful.

11. Mr. Stevens wrote to Ms. Joanna Maund, the director of standards enforcement, on March 6, 2004. He said the files were in use on November 20, 2003, but did not address why he had not submitted the requested files by December 8, 2003.

12. Ms. Maund spoke with Mr. Stevens on March 8, 2004 when he said that he was still working on one of the files but the remaining files were available for review. Ms. Maund advised Mr. Stevens to send the files forthwith to practice inspection. As of August 23, 2004, Mr. Stevens had not done so.

13. Mr. Stevens did not challenge or deny the facts set out above. He acknowledged in giving evidence that his defence might not be useful, but he outlined his defence and gave evidence in support of it. There were three main points to his defence. First, that he had made a positive contribution as a chartered accountant and that he did not shirk his responsibilities. Second, there were valid reasons for the additional delay and problems with some client documentation which were beyond his control. Third, he had ongoing health issues which were exacerbated by stress and accordingly he was having difficulty

getting work done. He said that some of the files had been removed to storage and there had been difficulty finding them. He was concerned that if he sent the files to the Institute they would not be returned on a timely basis, and he would not be able to complete work for his clients.

14. Mr. Stevens had experienced some very serious health problems and for periods of time subsequent to 2001 he had been unable to work. His continuing health problems include diabetes which has resulted in the loss of his eyesight for periods of time. The matter which was heard *in camera* dealt with issues involving other people which had caused significant stress and consumed much of Mr. Stevens' time.

15. In response to a question from the chair, Mr. Stevens acknowledged that he had access to a photocopier and that in hindsight at least one of the files could have been forwarded as requested.

DECISION ON THE CHARGE

16. In our deliberations, we concluded that Mr. Stevens may have had a reasonable and realistic concern with respect to one of the clients which did preclude him from sending away the file for a period of time. We also concluded that given his health and other circumstances, there were periods of time which explained why he had not cooperated with practice inspection. However, it was also clear from the evidence that he had not submitted the files which he could have submitted, even at the date of the hearing. We concluded that the health and other circumstances might well impact on the sanction imposed, but that the only conclusion we could come to with respect to the charge was that he had not cooperated as required.

17. We found that the charge had been proven, that Mr. Stevens had failed to cooperate with the officers, servants or agents of the Institute between September 2, 2003 and April 7, 2004, as alleged, and that his failure to do so constituted professional misconduct. When the hearing resumed, the chair read the decision for the record. This decision is set out in the formal written decision and order sent to Mr. Stevens on September 14, 2004, and reads as follows:

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Robert J.C. Stevens guilty of the charge.

SANCTION

18. Neither party gave evidence with respect to sanction. Both Ms. Glendinning and Mr. Stevens made submissions with respect to the appropriate sanction.

19. On behalf of the professional conduct committee Ms. Glendinning sought an order which included: a written reprimand; a fine in the range of \$2,500 to \$3,000; a requirement that Mr. Stevens cooperate within a specified time, failing which he would be expelled; and the usual term for notice of the decision and order. Ms. Glendinning also said that the professional conduct committee would request that Mr. Stevens reimburse the Institute for some of the costs of the prosecution and hearing.

20. Ms. Glendinning submitted that in this particular case, the principles of rehabilitation and specific deterrence should be given priority. She submitted that the principle of general deterrence, which was less important in this case, would be satisfied with a fine and notice of the decision and order.

21. Ms. Glendinning acknowledged that in light of Mr. Stevens' evidence, there was a question as to whether or not he was governable. She said it was not a question of Mr. Stevens' willingness to cooperate as required, but his ability to do so. Nevertheless, she submitted on behalf of the professional conduct committee that he should be given the opportunity to show that he is governable, which he could do by submitting all four files within ten days of the order becoming final.

22. Mr. Stevens, in his submissions, said that he found it discouraging that he would be fined for thinking of his client's needs and that the publication caused him great concern and asked that his name be withheld.

23. Mr. Stevens said that as a result of depression, overwork, stress and problems with his health, he was basically incapacitated and unable to comply with what he otherwise acknowledged were reasonable requests by the practice inspection committee.

24. Mr. Stevens submitted that his misconduct affected no one other than himself and the Institute; that it did not involve moral turpitude, and there was no question of his competence. In the circumstances, he thought the fine was unwarranted and his name should be withheld from any publication.

25. After the panel's deliberations, the hearing resumed and the chair set out for the record the terms of the order. These terms were incorporated into the formal written order sent to the parties on September 14, 2004. The order reads:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Stevens be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Stevens be and he is hereby fined the sum of \$2,500, to be remitted to the Institute within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Stevens be and he is hereby charged costs fixed at \$5,700, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Stevens submit to the director of practice inspection, within ten (10) days from the date this Decision and Order becomes final under the bylaws, the four working paper files requested in the September 2, 2003 letter from the practice inspection administrator.

5. THAT notice of this Decision and Order, disclosing Mr. Stevens' name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (a) to the Public Accountants Council for the Province of Ontario; and
 - (b) to the Canadian Institute of Chartered Accountants.
6. THAT notice of this Decision and Order, not disclosing Mr. Stevens' name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee, by publication in *CheckMark*.
7. THAT in the event Mr. Stevens fails to comply with any of the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Stevens' current or former practice, employment and/or residence.

PRIMARY OBJECTIVE OF THE SANCTION

26. We concluded that the primary objective of the sanction should be rehabilitation. We also concluded that giving priority to the principle of rehabilitation had implications for two aspects of the order, namely compliance and the notice of the decision and order to be published in *CheckMark*.

REPRIMAND

27. The panel decided that a reprimand was necessary as a specific deterrent to the member, to stress to him the importance of complying with the requirements of the Institute, and the unacceptability of his conduct as a chartered accountant.

FINE

28. The fine was imposed as both a general deterrent to other members and a specific deterrent to Mr. Stevens. We recognized that given Mr. Stevens' financial circumstances, a fine would have a significant impact. We concluded that the aggravating circumstances of this case, particularly the number of opportunities he was given to cooperate, required a fine. The amount of the fine imposed is such that in Mr. Stevens' circumstances it does not amount to a licence fee.

COSTS

29. Mr. Stevens' conduct was solely responsible for the costs incurred in this matter. The costs requested would not fully indemnify the Institute for the costs of the proceedings and are less than the costs usually awarded on a partial indemnity basis for a day's hearing. While the costs will be an unwelcome financial burden for Mr. Stevens, we concluded that it was appropriate that he bear some of the costs and accordingly made

the order that he reimburse the Institute in the amount of \$5,700. We allowed him two years from the time the order becomes final to pay the costs in light of his circumstances.

COMPLIANCE

30. If Mr. Stevens is unable to comply with the requirements of the Institute, such as a requirement to deliver the files, it will be clear that he is not capable of rehabilitation. He came to the discipline hearing without delivering any of the files in the months prior to the hearing and without bringing any of the files with him, even though he said he knew where they were. There is little or no point in making an order intended to help Mr. Stevens rehabilitate himself if he is not able to deliver the files in a timely manner. We concluded Mr. Stevens should have one more chance to provide the files to practice inspection, failing which he should be expelled.

31. Moreover, Mr. Stevens was urged at the hearing by the chair to submit the files within two weeks from the date of the hearing. The chair pointed out that he had a history of procrastination and accordingly should attend to the matter immediately rather than run the risk that something would intervene and he would not be able to provide the files as required.

NOTICE

32. We recognize that notice disclosing a member's name is a strong, specific and general deterrent. A name is withheld from a notice published in *CheckMark* only in rare and unusual circumstances. In our view in this case, there are rare and unusual circumstances. We concluded that if Mr. Stevens' name was published in *CheckMark*, his employment would likely be terminated, and the result would be that he would lose both his ability to rehabilitate himself and the point or purpose of rehabilitation.

33. In addition to publication destroying both the means and the point of rehabilitation, there were a number of other important factors. While it could not be said that Mr. Stevens' failure to cooperate was wholly the result of health-related problems and an inability to deal with the related stress and depression, we did conclude that the health-related problems were the root cause of his difficulty.

34. This was not a case which involved moral turpitude. No client had been harmed by Mr. Stevens' conduct. There was no suggestion that he was not competent. He had cooperated in previous practice inspections. He had contributed to the profession and was held in high regard.

35. We found Mr. Stevens to be contrite, sincere and deserving of the opportunity to rehabilitate himself. We thought that if he delivered the files as required it would demonstrate he was rehabilitating himself. If he does deliver the files, his name will be withheld from publication in *CheckMark*, and his rehabilitation can continue. If he fails to deliver the files, he will be expelled and his name will be disclosed in the notice published in *CheckMark*, as well as in the notice published in the appropriate newspaper.

EXPULSION FOR FAILURE TO COMPLY WITH THE TERMS OF THE ORDER

36. An order of the discipline committee which did not provide for consequences in the event a term or terms of the order were ignored would be largely meaningless. Accordingly, as is the usual practice, the order provides that if Mr. Stevens fails to comply, he will be expelled and notice of his expulsion will be published in *CheckMark* and in an appropriate newspaper, so that the public in the area where he lives or practices will know that he is no longer a chartered accountant.

DATED AT TORONTO THIS 17th DAY OF JUNE, 2005
BY ORDER OF THE DISCIPLINE COMMITTEE

B.A. TANNENBAUM, FCA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

L.G. BOURGON, CA
R.I. COWAN, CA
G.R. PEALL, CA
R.A. VICKERS, FCA
P.W. WONG (Public Representative)